

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
)
Plaintiff,)
)
vs.) Case No. CR-08-107-D
)
GEORGE ALLEN LIVINGSTON,)
)
Defendant.)

ORDER

This matter comes before the Court on remand from the court of appeals to conduct an evidentiary hearing and decide “whether Mr. Livingston ‘entered into the stipulation knowing of the consequences to his appeal and voluntarily surrendering his appeal of the suppression motion.’”

United States v. Livingston, 586 F.3d 819, 823 (10th Cir. 2009) (quoting *United States v. Larson*, 302 F.3d 1016, 1022 (9th Cir. 2002)). On January 21, 2010, Defendant George Allen Livingston appeared in person with appointed counsel, James Rowan, and the government appeared through Assistant United States Attorney Timothy Ogilvie. The Court heard a proffer by defense counsel, and heard the testimony of Mr. Livingston concerning the circumstances under which the stipulations of fact were made; the government agreed with the accuracy of Mr. Livingston’s testimony.

For the reasons stated in open court, the Court finds that Mr. Livingston did not knowingly and voluntarily agree to the stipulations of fact on which he was found guilty of the charges in the Indictment. Further, the Court finds that Mr. Livingston did not knowingly and voluntarily waive a jury trial. The Court further finds that this case should be set for trial on the next available jury trial docket.

IT IS THEREFORE ORDERED that the Memorandum of Decision entered November 5, 2008, the sentence imposed April 8, 2009, and the Judgment dated April 14, 2009, are VACATED. This case is set for jury trial on the Court's February 8, 2010 trial docket.

IT IS SO ORDERED this 21st day of January, 2010.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE